

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY GRAVES

Claimant

VS.

EATON CORPORATION

Respondent

Self-Insured

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Docket No. 236,008

ORDER

Both parties appealed the Award dated May 10, 1999, entered by Administrative Law Judge Bruce E. Moore.

APPEARANCES

Scott J. Mann of Hutchinson, Kansas, appeared for the claimant. Edward D. Heath Jr., of Wichita, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges that he injured his left shoulder at work in a series of accidents by repetitively opening and closing a bar machine over the course of several years ending September 16, 1998. During that period of alleged injury, claimant also alleges a specific accident on April 11, 1997, when he slipped and fell sustaining additional injury to his shoulder. Adopting the opinion of Dr. Philip R. Mills, the Judge found claimant had a 15 percent permanent partial disability to the left upper extremity and shoulder. The Judge did not reduce the award for preexisting functional impairment and used 210 weeks rather than 225 weeks to compute the benefits due for this scheduled injury.

Claimant contends the Judge erred by (1) using 210 weeks rather than 225 weeks to compute the award and (2) failing to adopt the functional impairment opinion of Dr. C. Reiff Brown. Claimant argues that he should receive an award for a 19 percent permanent partial disability to the left upper extremity and shoulder.

Conversely, the respondent contends the Judge erred by failing to deduct an amount for preexisting impairment. Respondent argues that the award should be reduced to one for a 6% functional impairment to the upper extremity, including the shoulder.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. In 1969, Mr. Graves began working for Eaton Corporation as a machinist. The job required Mr. Graves to use his left upper extremity to load and forcefully ram eight-foot-long bars into the machines that he operated. Over the years, Mr. Graves began to experience discomfort in his left shoulder which gradually worsened.
2. On April 11, 1997, Mr. Graves slipped and fell at work, which markedly increased the left shoulder discomfort that he had been experiencing for a number of years. Despite the increased pain, Mr. Graves did not seek medical treatment. Instead, he continued to perform his regular job duties. But as he continued to work, his shoulder symptoms worsened.
3. Eaton Corporation referred Mr. Graves to a doctor for medical treatment. That doctor then referred Mr. Graves to a specialist who recommended a complete shoulder replacement. As of the date of the December 1998 regular hearing, Mr. Graves was postponing that surgery as long as possible.
4. At his attorney's request, Mr. Graves saw board certified orthopedic surgeon Dr. C. Reiff Brown. Dr. Brown evaluated Mr. Graves on September 16, 1998, and recommended restrictions on his work and activities. Before that date, no doctor had restricted Mr. Graves' activities nor taken him off work.
5. Dr. Brown diagnosed degenerative arthritis in the left shoulder joint that was aggravated by both Mr. Graves' work and the April 1997 fall. The doctor testified:

I believe that he has advanced degenerative arthritis of the shoulder joint, which was aggravated by the heavy work activity that he had done over a period of years. The work activity, I felt, was responsible for the advancement of the changes that he had, and I felt that the incident that he described that occurred on May -- April the 11th, 1997, aggravated even further the symptoms that were already present.
6. Utilizing the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment (Guides), Dr. Brown determined that Mr. Graves had a 19 percent permanent partial impairment to the left upper extremity as a result of the degenerative changes in the shoulder. In arriving at that rating, Dr. Brown considered both the loss of range of motion and shoulder crepitus. The doctor believed that one-third of the 19 percent rating occurred as a result of the April 1997 accident and two-thirds occurred before that date. The doctor attributed all of the 19 percent impairment to Mr. Graves' repetitive work activities and the April 1997 fall.

7. Eaton Corporation hired Dr. Philip R. Mills, who is board certified in physical medicine and rehabilitation, to examine and evaluate Mr. Graves. Dr. Mills examined Mr. Graves on January 13, 1999, and diagnosed left shoulder degenerative arthritis, which constituted a 15 percent impairment to the upper extremity using the Guides. In arriving at that rating, Dr. Mills considered only the loss of range of motion and did not consider the shoulder crepitus, which he rated higher than Dr. Brown. Dr. Mills disagreed with Dr. Brown's interpretation of the Guides that the impairment for shoulder crepitus should be combined with the impairment for loss of range of motion to rate the shoulder.

8. Dr. Mills estimates that 50 percent of the 15 percent impairment to the upper extremity and shoulder preexisted the April 1997 accident.

CONCLUSIONS OF LAW

1. The finding that Mr. Graves has a 15 percent permanent partial disability to the left upper extremity and shoulder should be affirmed. But the Award should be modified to compute the permanent partial disability benefits using 225 weeks rather than 210 weeks for the starting point.

2. The Appeals Board concludes that Mr. Graves sustained a series of accidents and repetitive mini-traumas to the left shoulder up through April 11, 1997, when he slipped and fell further injuring and aggravating the shoulder. Closely examining the functional impairment and preexisting impairment opinions of both Dr. Mills and Dr. Brown, the Appeals Board affirms the Judge's finding that neither doctor attributed any impairment to the work that Mr. Graves performed after April 11, 1997.

3. Persuaded by Dr. Mills' functional impairment rating, the Appeals Board concludes that Mr. Graves had a 15 percent functional impairment to the left upper extremity and shoulder as of April 11, 1997, all of which resulted from either his repetitive and forceful work activities or the April 1997 slip and fall.

4. Because it would not change the award in any manner, rather than entering a separate award for the series of accidents and a separate award for the April 11, 1997 accident, only one award will be entered for the entire 15 percent permanent partial disability. Because there is no evidence of preexisting impairment other than that directly related to the ongoing repetitive mini-traumas, there is no reduction for preexisting impairment.¹

5. The Workers Compensation Act provides that a worker is entitled to a maximum of 225 weeks of permanent partial disability benefits for a shoulder injury.² As provided by regulation,³ the number of weeks of temporary total disability benefits (0) is subtracted from

¹ See K.S.A. 1996 Supp. 44-501(c).

² K.S.A. 1996 Supp. 44-510d(a)(13).

³ K.A.R. 51-7-8.

225 and the resulting number is then multiplied by the 15 percent functional impairment rating. That computation yields 33.75, which is the number of weeks of permanent partial disability compensation that Mr. Graves is entitled to receive in this claim.

6. The Appeals Board adopts the findings and conclusions set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board modifies the Award dated May 10, 1999, using 225 weeks to compute the benefits due.

Larry Graves is granted compensation from Eaton Corporation for a series of accidents ending April 11, 1997 and resulting injury. Mr. Graves is entitled to receive 33.75 weeks of permanent partial disability benefits at \$338 per week, or \$11,407.50, for a 15 percent permanent partial disability to the left upper extremity and shoulder, making a total award of \$11,407.50, which is all due and owing less any amounts previously paid.

The Appeals Board adopts the remaining orders contained in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
Edward D. Heath Jr., Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director